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facts to be proved to make out a cause of action, presents a new rule of substantive law, and puts accidents on carriers in a different class from other accidents where the maxim is applicable. It is quite possible that this result is justified by public policy, but the reasoning and terminology used in reaching it are open to serious criticism.

PLEADING—MISJOINDER OF MASTER AND SERVANT AS PARTIES DEFENDANT—FEDERAL EMPLOYERS' LIABILITY ACT.—A railway employee sued the company and its engineer jointly for personal injuries. The plaintiff's theory of recovery against the engineer was based on a common-law right, while recovery was sought against the company under the Federal Employers' Liability Act. The state court held that there was a fatal misjoinder. The plaintiff secured a writ of *certiorari*. *Held*, that the refusal to permit the joinder in the state court did not violate any right conferred by federal law. *Lee v. Central of Georgia Ry.* (1920) 40 Sup. Ct. 254.

An action brought in a state court by a resident plaintiff against a resident and a non-resident defendant cannot be removed to a federal court on grounds of diversity of citizenship, where both defendants are proper parties to the action. *Chesapeake & Ohio Ry. v. Dixon* (1900) 179 U. S. 131, 21 Sup. Ct. 67; *Dougherty v. Yazoo & M. V. Ry.* (1903, C. C. A. 5th) 122 Fed. 205. The decisions of the federal courts are not in accord as to whether or not a master and his negligent servant are proper parties defendant, but as far as the question of removal is concerned such joinder is proper. *Alabama G. S. Ry. v. Thompson* (1906) 200 U. S. 206, 26 Sup. Ct. 161; *Southern Ry. v. Miller* (1910) 217 U. S. 209, 30 Sup. Ct. 450. But by express provision, no action based on the Federal Employers' Liability Act can be removed upon the ground of diverse citizenship. *Eng v. Southern Pac. Ry.* (1913, D. Ore.) 210 Fed. 92; *Kansas City So. Ry. v. Leslie* (1915) 238 U. S. 599, 35 Sup. Ct. 844. As the only question which was before the Supreme Court in the instant case was one of state court procedure, its decision is obviously correct, but the soundness of the state court decision is questionable. A master is "liable" with his servant for an injury caused by the servant at his express direction. *Hewett v. Swift* (1862) 85 Mass. 420; *Brokaw v. New Jersey Ry.* (1867, Sup. Ct.) 32 N. J. L. 328. By a preponderance of authority a joinder of master and servant is allowed, although the master's liability be based solely on the doctrine of *respondeat superior*. *Able v. Southern Ry.* (1906) 73 S. C. 173, 52 S. E. 962; *Whalen v. Pennsylvania R. R.* (1906, Sup. Ct.) 73 N. J. L. 192, 63 Atl. 993; *contra, Parsons v. Winchell* (1850) 59 Mass. 592; *Western Union v. Olsson* (1907) 40 Colo. 264, 90 Pac. 841. Likewise where the liability of the master is imposed by statute. *Rogers v. Ponet* (1913) 21 Calif. App. 577, 132 Pac. 851; *Doyle v. St. Paul Union Depot Co.* (1916) 134 Minn. 461, 159 N. W. 1081; *contra, Thompson v. Cincinnati N. O. & T. P. Ry.* (1915) 165 Ky. 256, 176 S. W. 1006. The fact that the different theories of recovery may require different measures of damages is not an insurmountable obstacle to a joinder, for exemplary damages have been allowed against one defendant while only compensatory damages were allowed against the other defendants. *Rauma v. Lamont* (1901) 82 Minn. 477, 85 N. W. 236; *Mauk v. Brundage* (1903) 68 Ohio, 89, 67 N. E. 152. Since an injured third party may prosecute to judgment either the master, the negligent servant, or even both separately according to the majority American view, it is submitted that the liability of master and servant is essentially joint, regardless of whether the theory of recovery against the master is based on the common law or upon a statute; and that the chances of securing practical justice will be increased by allowing a joinder, as it will avoid a multiplicity of suits and facilitate the task of proving a cause of action.

PROPERTY—ADVERSE POSSESSION—DECREE OF OUSTER.—The plaintiff brought an action of trespass to try her "title," which she alleged was obtained by the